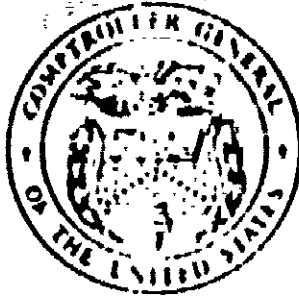


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-204614

DATE: March 11, 1982

MATTER OF: The Tricentennial Companies

DIGEST:

1. Where the invitation for bids states that the procuring agency would not pay demurrage charges, a bid stating that the shipper (bidder) would not pay demurrage charges is nonresponsive and the bidder is not eligible for award.
2. The question of whether the District of Columbia (District) followed Department of Labor regulations--concerning referral to the Small Business Administration of a finding that a small business bidder was not a regular dealer within the meaning of the Walsh-Healey Act--is academic, since the bidder submitted a nonresponsive bid.

The Tricentennial Companies (Tricentennial) protests the determination of the District of Columbia Government (District) to cancel invitation for bids (IFB) No. 0401-AA-68-0-1-G1 for supplying lime. The District determined that all bidders were ineligible for award because some bidders submitted nonresponsive bids and the other bidders, including Tricentennial, were not regular dealers within the meaning of the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1976). Tricentennial contends that the District did not follow applicable procedures in determining that Tricentennial was not a regular dealer. We find that Tricentennial's bid was non-responsive, rendering consideration of Tricentennial's contention academic.

The IFB provided that the lime described by item 1 would be delivered by rail or truck at the option of the District and that District personnel would unload the lime delivered by rail. The IFB further provided that prices quoted shall include delivery, all charges prepaid

and that the District would not pay demurrage charges-- which are the railroad's charges to the shipper or bidder for detaining the railcar beyond the time published in the tariff for unloading (see N. Frank & Son, Inc., B-194253, May 2, 1979, 79-1 CPD 310).

Tricentennial, in a cover letter it described as an integral part of its bid, stated that Tricentennial, the shipper, would not be responsible for detention charges. Apparently, Tricentennial did not want to assume the risk of demurrage charges in the event of delay in unloading by the District. However, Tricentennial was required to submit its bid in accordance with the terms of the solicitation or protest those terms prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1981).

The question of the responsiveness of a bid concerns whether a bidder has unequivocally offered to provide the requested supplies in total conformance with the requirements of the solicitation. A bidder's intention must be determined from the bid itself (an accompanying letter being considered a part of the bid) at the time of bid opening. Northwest Ground Covers and Nursery, B-201609, February 9, 1981, 81-1 CPD 81. Tricentennial's bid falls short of an unequivocal offer to provide the supplies in conformance with the IFB because Tricentennial expressly took exception to the IFB's provision regarding demurrage charges. Thus, Tricentennial's bid was nonresponsive and Tricentennial was not eligible for award.

Accordingly, we have no need to consider whether the District acted properly in failing to refer its determination that Tricentennial was not a regular dealer to the Small Business Administration (SBA).

for Milton J. Aroslan
Comptroller General
of the United States